

ANTIGUA AND BARBUDA



FOOD SAFETY BILL, 2020

No. of 2020

ANTIGUA AND BARBUDA
FOOD SAFETY BILL, 2020
ARRANGEMENT OF CLAUSES

CLAUSES

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ANTIGUA AND BARBUDA

FOOD SAFETY BILL, 2020

NO. OF 2020

AN ACT to provide for food safety and food quality in Antigua and Barbuda, to protect consumer health, to promote trade in food that is safe and to provide for related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Food Safety Act 2020.

(2) This Act shall come into force on a date to be appointed by the Minister by Notice published in the official Gazette and it shall be lawful for the Minister to bring into force separate parts of this Act on separate dates.

2. Interpretation

(1) In this Act, unless the context otherwise requires —

“additive” —

(a) means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result, directly or indirectly, in it or its by-products becoming a component of, or otherwise affecting, the characteristics of such foods;

(b) excludes contaminants or substances added to food for maintaining or improving nutritional qualities;

“adulterate” means to make impure in order to give a false impression or value or to hide defects, by the addition of a foreign, inferior or inert substance to food, or by the exclusion or

removal of a valuable or necessary ingredient of food, and “adulterated” and “adulteration” shall have a corresponding meaning;

“**advertisement**” includes any representation, whether written, pictorial, visual or otherwise, made for the purpose of promoting directly or indirectly the sale or disposal of any food or any substance represented as food, and “advertise” shall have a corresponding meaning;

“**batch number**” means a reference number assigned by a food business operator to a series of similar goods, or goods produced under similar conditions, and is synonymous with “lot number”;

“**CAHFSA**” means the Caribbean Agricultural Health and Food Safety Agency established by Agreement among member states of the Caribbean Community and signed in Dominica on March 12, 2010, and continued by the Revised CAHFSA Agreement signed on February 25, 2011;

“**contaminant**” means any substance not intentionally added to food which is present in such food as the result of the production, in operations carried out in crop husbandry, animal husbandry and veterinary medicine, manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination, but excludes insect fragments, rodent hairs and other extraneous matter;

“**competent authority**” means –

(a) the Food Safety Service;

(b) a public authority or public officer of another country charged with the duty of administering the laws of that country with respect to the importation of goods; or

(c) for the treatment of goods in free circulation in the Economic Union Area under Part VII, a regional body established by the Organisation of Eastern Caribbean States to regulate matters relating to the importation, exportation and movement of goods;

“**conveyance**” means an aircraft, train, vessel, motor vehicle, or other thing used to transport food from one place to another.

“**counterfeiting**” means manufacturing, processing, preparing or packaging a product or substance purporting to be a food, but that is only a likeness of the food it imitates;

“**dispatch**” means to take goods or cause goods to be taken outside of Antigua and Barbuda to another OECS Protocol Member State;

“**[Director]**” means the [Director] of the Food Safety Service appointed under section 6;

“**Eastern Caribbean Economic Union**” means the Economic Union established pursuant to Article 1 of the Protocol of the Eastern Caribbean Economic Union of the Revised Treaty of Basseterre;

“**Economic Union Area**” refers to the collective territorial jurisdictions of OECS Protocol Member States;

“Economic Union Protocol” means the Protocol to the Revised Treaty of Basseterre entitled the Protocol of Eastern Caribbean Economic Union;

“export” means to take goods or cause goods to be taken outside of Antigua and Barbuda to a third party country;

“exporter” includes a person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food exported from or to be exported from Antigua and Barbuda;

“food” —

(a) means any substance whether processed, semi-processed or raw, which is intended for human consumption and taken into the body to sustain life or to provide energy or nutrients;

(b) includes drink, chewing gum and any other substance used in the manufacture, preparation or treatment of food but does not include cosmetics or tobacco or substances used only as drugs;

“food analyst” means a person or institution designated as a food analyst under section 15;

“food borne disease” means an infectious, toxic or other disease caused by agents that enter the body through the ingestion of food;

“food business” means any activity relating to or involving the production, distribution, manufacture, preparation, treatment, processing, packaging, transporting, handling, service, storage or, sale of food, whether for profit or not;

“food business operator” means any person authorised to operate as owner or person in charge of a food business;

“food fraud” means —

(a) the adulteration of food;

(b) the deliberate substitution, simulation, tampering, counterfeiting or misrepresentation of food, ingredients or packaging; or

(c) false or misleading statements made about a food, or concealment of what ought to be disclosed,

for financial gain;

“food handler” means any person who directly handles packaged or unpackaged food, food equipment and utensils, or food contact surfaces;

“food inspector” means a person appointed to act as such under section 8;

“food safety” means steps or procedures taken to ensure that food will not cause sickness or harm to a consumer when prepared, served or eaten according to its intended use;

“food safety rules” means rules made under this Act in relation to food safety;

“**Food Safety Service**” means the Food Safety Service established under section 6;

“**free circulation**” means the unhindered movement of goods within the Economic Union Area after the goods have entered into the Economic Union Area and—

- (a) have adhered to all applicable customs-related procedures and requirements associated with the clearance and release of goods upon importation; and
- (b) all duties or other charges having equivalent effect which are payable on the goods have been levied, and the goods have not benefitted from any drawback of those duties or charges,

at the first port of entry in the Economic Union Area;

“**goods**” includes any tangible property, including personal property, livestock, conveyances, stores, baggage, documents, including in electronic form, currency and mail and packets imported by post, and includes prohibited or restricted goods and food;

“**governmental entity**” means a Ministry, Department, statutory body, or other government institution;

“**HACCP**” means the Hazard Analysis and Critical Control Points and refers to an internationally recognised system which identifies, evaluates and controls hazards significant for food safety;

“**hazard**” means a biological, chemical or physical agent in or condition of food with the potential to cause an adverse health effect;

“**import**” means to bring goods or cause goods to be brought into Antigua and Barbuda from a third party country;

“**importer**” includes any person who, whether as owner, consignor, consignee, agent or broker is in possession of or in any way entitled to the custody or control of any food landed or likely to be landed in Antigua and Barbuda;

“**INFOSAN**” means the International Network of Food Safety Authorities, a global network of national food safety authorities managed jointly by the Food and Agricultural Organisation and the World Health Organisation;

“**ingredient**” means any substance, including an additive, used in the manufacture or preparation of food and present in the final product although possibly in a modified form;

“**inspection**” means the examination, by any person authorized under this Act, of food or systems put in place for the control of raw materials, processing or distribution of food, and includes process and finished product testing to verify that they conform to the requirements of this Act or any other law;

“**International Organisation for Standardization**” means the international non-governmental organisation responsible for developing and publishing international standards;

“**ISO/IEC17025**” means the standard containing general requirements for the competence of testing and calibration laboratories issued by the International Organisation for Standardization;

“**label**” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food; and labelling includes any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that for the purpose of promoting its sale or disposal;

“**licence**” means a food business licence granted under section 31;

“**lot number**” means a reference number assigned by a food business operator to a series of similar goods, or goods produced under similar conditions, is synonymous with “batch number” and when used in relation to crops, the lot number is the crop harvesting date, as decided when the crop starts;

“**Minister**” means the Minister responsible for food safety;

“**national reference laboratory**” means a laboratory designated as such under section 13;

“**OECS Member State**” means a State or territory that possesses associate membership or full membership in the Organisation of Eastern Caribbean States as contained in Schedule 1, Part A;

“**OECS Protocol Member State**” means a State or territory that possesses membership to the Organisation of Eastern Caribbean States and is Party to the Economic Union Protocol as contained in Schedule 1, Part B;

“**official**” means established, authorized or performed by the Food Safety Service or by the Minister;

“**official laboratory**” means a laboratory designated as such under section 14;

“**Organisation of Eastern Caribbean States**” means the international organisation established by the Treaty of Basseterre signed on June 18, 1981 and continued under the Revised Treaty of Basseterre;

“**owner**” in relation to anything, includes any person having for the time being the possession, custody or control of the thing;

“**person**” means an individual or a body corporate;

“**personal consumption**” means for private consumption or use and not for sale, exchange or for gift;

“**port of entry**” has the same meaning as in the Customs Control and Management Act 2013;

“**premises**” includes any building, tent or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land used in connection

therewith, and includes any street, open space or place of public resort, or conveyance used for the sale, packaging, preparation, preservation, transportation or storage of any food;

“prescribed” means specified by this Act or any regulations made under this Act;

“reconditioning” means the process of turning imperfect, mislabelled, or contaminated foods into edible and profitable food;

“recall” means the action to remove food from the market at any stage of the food chain, including food already in the possession of consumers;

“repackaging” means dividing larger or bulkier packages of food into smaller units, and “repackaged” shall have a corresponding meaning;

“Revised Treaty of Basseterre” means the Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States signed on June 18, 2010 in Gros Islet, Saint Lucia;

“risk analysis” means a process composed of risk assessment, risk management and risk communication in accordance with internationally accepted procedures and standards;

“risk assessment” means a scientifically based process consisting of hazard identification, hazard characterization, exposure assessment, and risk characterization;

“sell” includes to put up for sale, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner for profit, exhibition, donation or public gathering, and “sold”, “selling” and “sale” have corresponding meanings;

“SPS Agreement” means the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization entered into force with the establishment of the World Trade Organisation on January 1, 1995, as may be amended from time to time;

“staff” includes the Director of the Food Safety Service;

“street food” means ready to eat food or drink sold by a vendor, in a street or public place, such as a market or fair, often sold from a portable food booth, food cart or food truck and meant for immediate consumption;

“third party country” means a country other than an OECS Protocol Member State;

“this Act” means this Act and any schedules, regulations, orders or notices made under it;

“traceability” means the ability to follow the movement of a food through specified stages of production, processing and distribution;

“unhindered movement of goods” refers to the ability of goods to move within the Economic Union Area with no intervention by customs authorities;

3. Application and Non-Application

(1) This Act applies to the safety of food at all stages in the food chain including —

- (a) the production, processing, manufacturing or other preparation of food;
- (b) the handling, sale and distribution of food;
- (c) the import, transit and export of food;
- (d) the dispatch of food to Antigua and Barbuda from another Protocol Member State and from Antigua and Barbuda to another Protocol Member State;
- (e) the transport, packaging and storage of food;
- (f) any other activity related to the activities mentioned in paragraphs (a) to (d);
- (g) the premises or location where food is prepared, whether on land or at sea; and
- (h) all food, notwithstanding the scope of legislation on fish and aquaculture products, meat or other specific food.

(2) Notwithstanding the generality of subsection (1), this Act does not apply to food that is produced, prepared, imported or exported for personal consumption.

4. Objectives of the Act

The objectives of this Act are —

- (a) to coordinate and integrate food safety at all stages of the food chain;
- (b) to ensure food safety while enabling a competitive and commercially supportive environment for food businesses;
- (c) to establish an integrated regulatory approach to food safety in order to provide for a more efficient, effective, transparent and coordinated administration throughout the food chain;
- (d) to regulate food quality;
- (e) to boost confidence in trade in food.

PART II

ADMINISTRATION

5. Powers of the Minister

- (1) The Minister has primary responsibility for the administration of this Act.
- (2) The Minister may, in consultation with relevant public authorities —
 - (a) designate reference and official laboratories for the purposes of this Act;
 - (b) designate food analysts and prescribe qualifications and experience required by food inspectors;

- (c) approve manuals developed by the Food Safety Service;
- (d) issue sanitary measures;
- (e) appoint the National Food Safety Advisory Body;
- (f) liaise with the Ministers of other OECS Protocol Member States, as necessary, to advance the implementation of the Eastern Caribbean Economic Union and the provisions of Part VI of this Act.

6. Food Safety Service

(1) There is hereby established a Food Safety Service in the Ministry, which shall be headed by a Director appointed by the Public Service Commission.

(2) The Director manages the operations of the Food Safety Service and exercises the powers and performs the functions assigned to him or her under this Act or any other enactment.

(3) The functions of the Food Safety Service are to —

- (a) establish a risk-based food safety and quality control framework to protect, enhance and ensure food safety and to protect consumers from food fraud;
- (b) carry out risk assessment based on available scientific evidence and in an independent, objective and transparent manner, and issue guidelines for risk assessment methodologies;
- (c) ensure that all food produced, distributed or marketed whether for domestic consumption or export, and whatever its origin, meets the standards required of food safety;
- (d) review, evaluate and audit the performance of governmental entities responsible for food safety;
- (e) carry out inspections for the purpose of preventing food safety risks;
- (f) develop and sustain effective food borne disease surveillance;
- (g) develop and coordinate a food safety early warning and emergency response system;
- (h) support the development of traceability systems;
- (i) prohibit or set limits for food additives usage, pesticide and veterinary drugs, residues, contaminants, heavy metals, and irradiation of food and such other substances and food processing methods as may be prescribed;
- (j) with regard to food businesses —
 - (i) issue, suspend, revoke or cancel a food business licence;

- (ii) maintain an up-to-date registry of food businesses that includes the name and location of the food business and the name and current contact information for each food business operator;
 - (iii) assign to each food business operator an identification number or another means of identifying and distinguishing that food business operator as determined by the Food Safety Service; and
 - (iv) assign all of the locations from which the food business operates and assign to each location an identifier or another means of identifying and distinguishing that location;
 - (k) issue, suspend, revoke or cancel food handler certificates;
 - (l) coordinate and provide advice, information or assistance to any governmental entity with responsibility for any aspect of food safety and food trade;
 - (m) develop import and export requirements and procedures for food;
 - (n) establish standards for the design, construction and layout of food business premises;
 - (o) evaluate equivalence of sanitary measures taken by trading partners;
 - (p) provide justification to other countries concerning sanitary measures applied;
 - (q) provide information regarding import requirements for food on request from any international, regional or local food safety organisation or person;
 - (r) collaborate with INFOSAN in the implementation of a traceability system in [insert name of State] and for other matters relating to food safety; and
 - (s) carry out such other activities as may be expedient to ensure compliance in all matters and activities considered necessary to achieve the objectives of this Act.
- (4) The Food Safety Service may develop programmes in relation to —
- (a) monitoring, inspection and control of food safety systems;
 - (b) food safety and quality systems;
 - (c) analytical methods and laboratory quality assurance;
 - (d) food vending and food handling; and
 - (e) risk-based inspection and quality control systems for food businesses.
- (5) The Food Safety Service may, by notice in the Gazette, issue food safety rules.
- (6) In exercising its responsibilities, the Food Safety Service may —
- (a) in consultation with the Minister, negotiate and enter into agreements with other governmental entities; and

- (b) enter into any other transaction or operation which in the opinion of the Food Safety Service is necessary for the discharge of its responsibilities.

7. Establishment of the National Food Safety Advisory Body.

(1) There is hereby established a body to be called the National Food Safety Advisory Body which shall function as an advisory body to the Minister and the Food Safety Service on matters relating to food safety.

(2) Schedule 2 applies as to the constitution and procedures of the National Food Safety Advisory Body.

8. Appointment of food inspectors

(1) The Public Service Commission shall appoint qualified persons as food inspectors under this Act.

(2) A food inspector appointed under subsection (1) shall perform such functions as may be required of him or her under this Act.

(3) The Minister shall, upon the advice of the Director of the Food Safety Service, prescribe the qualifications and experience required of a food inspector in regulations.

(4) The Director shall issue an identification card to every food inspector under this Act.

9. Investigative powers of a food inspector

(1) For the purposes of investigating any matter in the discharge of his or her functions under this Act, a food inspector may —

- (a) enter any food business premises in which food intended for sale or for other commercial use is being, or is suspected of being, produced, manufactured, treated, graded, packed, packaged, labelled, stored, handled, prepared, served or sold, or in which any other operation or activity in connection with such food is being, or suspected of being, carried out, and may, for the purpose of determining whether this Act is being contravened —
- (i) inspect or search such premises, appliance, product, material, object or substance which is being, or is suspected of being, used or intended for use in connection with the production, manufacture, treatment, grading, packing, packaging, labelling, storage, handling, preparing, serving or sale of any food;
 - (ii) demand any information, records, or documents regarding the food business;
 - (iii) weigh, count, measure, mark, open and take samples in the prescribed manner of any food, product, material, object or substance; or its package or container; or lock, secure, seal or close any door giving access to it;
 - (iv) inspect any operation, record, document or process carried out on such premises, and demand any information regarding such operation or process from the

owner of such premises or from any person carrying out such operation or process;

(vi) read any values recorded by measuring instruments installed on the premises or by instruments in the possession of the food inspector;

(vii) take any photographs;

(b) stop and search any conveyance in which food intended for sale or any other commercial purpose, is being or is suspected of being transported, produced, manufactured, treated, graded, packed, packaged, stored, handled, prepared, served or sold or in which any other operation or activity in connection with such food is being, or is suspected of being, carried out, and may exercise any power in this subsection the food inspector considers appropriate; and

(c) for a specified period, stop the distribution or sale of food which the food inspector has reason to believe is contaminated, unwholesome or otherwise unfit for human consumption.

(2) A food inspector may only exercise the powers in subsection (1) with the consent of the food business operator, or owner or person in charge of any area or premises, or in the absence of such consent, on the basis of a warrant issued by a magistrate.

(3) A food inspector exercising his or her powers under this section —

(a) shall identify himself or herself as a food inspector by showing his or her identification card or other proof of his or her appointment or designation as a food inspector;

(b) may request the presence and assistance of a [law enforcement] [police] officer as he or she considers necessary.

10. Delegation of functions

(1) Subject to subsection (4), the Director of the Food Safety Service may, by instrument in writing, delegate to any public or private person any functions under this Act, and any such delegation may be made subject to such terms and conditions that the Director determines.

(2) The procedures for making a delegation under this section shall be as prescribed.

(3) An agreement must be concluded between the Food Safety Service and the person to whom a function has been delegated in this section with details of the terms and conditions of the delegation, including at least the following —

(a) the scope of any delegated functions to be performed, and the duration;

(b) remuneration arrangements, where the delegate is a private person;

(c) the means of supervision by the Food Safety Service;

(d) the minimum qualifications required to perform the delegated function, if any; and

- (e) the conditions of withdrawal of the delegation.
- (4) The Director shall not delegate any of the following functions —
- (a) developing and coordinating early warning and emergency response systems;
 - (b) prohibiting and setting limits for food additives usage, pesticides, contaminants and other substances;
 - (c) licensing and issuing of certificates;
 - (d) liaising with public authorities and regional and international bodies on food safety issues;
 - (e) developing import and export requirements and procedures for food;
 - (f) advising the Minister in the exercise of his or her powers under section 5(2);
 - (g) approval of standards, requirements, rules or sanitary measures; or
 - (h) other functions as may be prescribed.

11. Agreements and memoranda of understanding

The Food Safety Service shall, subject to the consent of the Minister, in order to facilitate the more efficient carrying out of the purpose and intent of this Act, enter into an agreement or memorandum of understanding with other governmental entities, which may —

- (a) provide generally for cooperation between or amongst the parties;
- (b) specify duties, powers and functions on such terms and conditions as may be agreed that one party may exercise, carry out and perform for another party;
- (c) be subject to such conditions, qualifications and exceptions as may be specified; and
- (d) be varied from time to time, in writing.

12. Manuals

(1) For the guidance of a governmental entity that has responsibilities under this Act, the Minister may approve manuals developed by the Food Safety Service in relation to the execution and enforcement of this Act.

- (2) A governmental entity referred to in subsection (1) shall —
- (a) have regard to any relevant provision of any such manual; and
 - (b) comply with any requirement in a manual developed under subsection (1), that requires the government entity to take specified steps in order to comply with such a manual.

13. National reference laboratories

(1) The Minister shall designate in writing at least one laboratory, which may be in another country, public or private, as a national reference laboratory for the purposes of this Act.

(2) A laboratory designated under subsection (1) must meet the requirements prescribed in ISOIEC17025.

(3) The functions of a national reference laboratory are to —

- (a) serve as a reference laboratory for comparative testing in the case of conflicting laboratory test results or in the case of contested results and ensure an appropriate follow-up of such comparative testing;
- (b) collaborate with official laboratories designated under section 14, in their area of competence;
- (c) censure the dissemination to official laboratories of information relating to testing procedures in relation to food safety;
- (d) provide scientific and technical assistance to the Food Safety Service for the implementation of this Act; and
- (e) carry out such other duties as may be set out in Regulations under this Act.

14. Official laboratories

(1) The Minister shall designate in writing at least one laboratory or testing facility, which may be in another country, and which may be public or private, as an official laboratory for the purposes of testing, analysis and other purposes as required under this Act.

(2) The Minister may cancel a designation under subsection (1) in accordance with Regulations.

(3) The Minister shall publish the names and addresses of —

- (a) any laboratories designated under subsection (1); and
- (b) any laboratories for which a designation is cancelled under subsection (2).

15. Food analyst

(1) Subject to subsection (2), the Minister may, in writing, designate any qualified person or institution as a food analyst for the purposes of this Act.

(2) A person or institution designated as a food analyst under subsection (1) shall possess such qualifications as prescribed.

(3) A director, owner or employee of a food business, or partner in a food business, who has any actual or reasonably perceived interest in a matter or other action to be taken by the Food Safety Service, whether such interest is direct or indirect, shall not act as a food analyst.

(4) The Food Safety Service shall publish a list of food analysts who are designated to conduct inspections and tests for the purposes of this Act.

16. Monitoring

(1) The Food Safety Service shall —

- (a) monitor and review the implementation of this Act;
- (b) set out the conclusions of its review in a report; and
- (c) publish the report in the Gazette.

(2) The first report under subsection (1)(b) must be published before the end of the period of five years beginning with the day on which this Act comes into force and subsequent reports at intervals not exceeding three years from the last publication.

17. Principles of food safety measures

(1) In meeting the objectives of this Act and in the issuance of sanitary measures, the Minister shall have regard to the principles contained in the SPS Agreement, including the following principles —

- (a) harmonisation with international standards;
- (b) risk analysis or risk assessment and science-based actions; and
- (c) being least trade restrictive, necessary and proportional to the risk.

(2) Where relevant scientific evidence is insufficient, sanitary measures may be adopted on the basis of available pertinent information, including information from international organisations.

18. Food standards and requirements

Any food sold, distributed or imported into [insert name of State] shall comply with the HACCP system and with any food standards Regulations made under this Act.

PART III

FOOD CONTROL AND EMERGENCY PREPAREDNESS

19. Traceability

(1) The Food Safety Service shall implement a traceability system which has the capacity to —

- (a) trace back through all stages of processing to the supplier of ingredients, raw material and primary packaging materials, including transportation, storage and distribution;

- (b) trace forward from the supplier of ingredients, raw materials and primary packaging materials through all stages of processing, including transportation, storage and distribution, finally to sale to the consumer; and
 - (c) enable the identification of all food throughout the food production chain.
- (2) A food business operator shall, in relation to food manufactured, stocked or supplied by the food business operator —
- (a) establish and maintain records as prescribed, identifying both the immediate previous source and immediate subsequent recipient of a food; and
 - (b) keep a record of an identification number and either a batch or lot number.
- (3) The food business operator shall make the records in subsection (2) available upon request to the Food Safety Service in accordance with the procedures prescribed.

20. Recall of food

(1) Where a food business operator knows or reasonably believes that a food which the food business operator has imported, produced, processed, manufactured, holds or distributed presents a food safety risk or is not otherwise in compliance with this Act, the food business operator shall immediately take the necessary measures to —

- (a) stop the distribution of the food;
 - (b) notify the Food Safety Service and provide detailed information on the actions taken for recall and the information provided to consumers;
 - (c) notify the public, consumers and relevant parties of the reason behind the food's recall and withdrawal in accordance with the procedure established by the Food Safety Service;
 - (d) withdraw from the market any food that may create a food safety risk or potentially mislead consumers; and
 - (e) recall from consumers and other relevant parties the food already purchased if other measures are not sufficient to guarantee food safety.
- (2) Notwithstanding the grounds listed in subsection (1), a food business operator may voluntarily initiate the recall actions under subsection (1) due to deficiency in the quality of the food, food labelling or packaging.

(3) Where a food business operator receives a recall notice from his or her supplier, the food business operator shall—

- (a) immediately inform the Director of the Food Safety Service and initiate recall of the food item for disposal;
- (b) advise the Director of actions taken to protect the consumer;

(c) comply with all directives issued by the Director; and

(d) liaise with the supplier from whom the food item was imported or to whom the food was exported.

(4) The Food Safety Service shall approve and publish a classification system for food depending on the risk to public health.

(5) The Food Safety Service shall issue a recall order in writing to a food business operator where a food presents a food safety risk or does not otherwise comply with the requirements of this Act.

(6) A recall order issued under subsection (5) must include the actions to be taken by the food business operator in the recall of the food, including, where applicable, the handling and disposal of any returned food.

(7) The food business operator is responsible for the costs of compliance with a recall order issued under subsection (5).

(8) Where the food business operator fails to comply with his or her obligations under a recall order under subsection (5), the Food Safety Service shall initiate a recall action and shall dispose of the food in accordance with prescribed procedures.

(9) In emergency cases, the Food Safety Service may take a recall action under subsection (1) without giving prior notice to the food business operator and may recover costs from the food business operator subsequently.

(10) Any food business operator that fails to comply with the recall obligations under subsection (6) shall be responsible for the costs of recall action incurred by the Food Safety Service.

21. Recall responsibilities and procedures involving an importer or exporter

(1) Where an importer reasonably believes that a food which he or she has imported is not in compliance with this Act, or receives a recall notice from a supplier or a recall order from the Food Safety Service, the importer shall —

(a) carry out a recall in accordance with section 20(1)(a) to (e);

(b) provide the consignees with information necessary to make it possible to locate the food in its distribution system;

(c) inform the Food Safety Service of where and how far into the supply chain the food has gone and whether any of the food has reached consumers;

(d) notify the public, trading partners and consignees of a recall, in the form and manner prescribed.

(2) For recall action involving exported food, the Food Safety Service shall, at the request of the exporter or at its own initiative, summarize and transmit essential information to the competent

authority in the importing country and the food exporter shall inform his or her trading partner of the grounds for the recall.

22. Inspection and seizure of suspected food

(1) A food inspector may at all reasonable times, without warrant or consent, enter any premises and inspect any food intended for human consumption which —

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Where a food inspector reasonably believes that a food does not comply with food safety rules, he or she may —

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it —
 - (i) is not to be used for human consumption, and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice;
- (b) seize the food; or
- (c) destroy or dispose of the food.

(3) Where the food inspector exercises the powers conferred by subsection (2)(a) he or she shall, as soon as is reasonably practicable, determine whether or not he or she is satisfied that the food complies with food safety rules and—

- (a) if the food inspector is so satisfied, shall immediately withdraw the notice; or
- (b) if he or she is not so satisfied, shall destroy or dispose of the food.

(4) Any costs incurred in connection with the destruction or disposal of food under this section shall be borne by the owner of the food and legal proceedings may be instituted for the purpose of recovery of such costs.

(3) A food inspector exercising his or her powers under this section —

- (a) shall identify himself or herself as a food inspector by showing his or her identification card or other proof of his or her appointment or designation as a food inspector;
- (b) may request the presence and assistance of a police officer as he or she considers necessary.

23. Food hazard or disease on premises

Where the Food Safety Service reasonably believes that a food hazard or the threat of a food borne disease exists in respect of any premises, it shall serve a written notice on the food business operator or on the owner of the premises, which shall include —

- (a) a request that the food business operator or the owner of the premises takes such action as the Food Safety Service determines to eliminate the risk to public health and safety posed by the food hazard or food borne disease within the time specified in the notice; and
- (b) an invitation to the food business operator or owner of the premises to make representations to the Food Safety Service concerning the matters specified in the notice within a specified time.

24. Non-compliance by food business operator or owner

(1) Where a food business operator or owner of premises on whom a notice has been served under section 23 fails to comply with the requirements of that notice, the Food Safety Service may direct a food inspector to enter the premises to carry out the requirements of the notice and take other actions as are considered necessary.

(2) A food inspector under subsection (1) shall act as directed by the Food Safety Service after obtaining a warrant issued by a magistrate.

(3) The Food Safety Service shall recover the costs of any action taken under subsection (1) from the food business operator or owner of the premises and may institute court proceedings for this purpose.

25. Food fraud

(1) Where food is intended for human consumption, a person shall not —

- (a) engage in food fraud in relation to the food; or
- (b) knowingly sell or possess the food in relation to which food fraud has been committed.

(2) Where a food inspector reasonably suspects a contravention of subsection (1) the food inspector may inspect the food in question and may —

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it —
 - (i) is not to be used for human consumption; and
 - (ii) is not to be removed or is not to be removed except to some place specified in the notice;
- (b) seize the food; or
- (c) destroy or dispose of the food.

(3) Where the food inspector exercises the powers conferred by subsection (2)(a) he or she shall, as soon as is reasonably practicable, determine whether or not he or she is satisfied that food fraud has been committed and—

- (a) if the food inspector is so satisfied, shall immediately withdraw the notice; or
- (b) if he or she is not so satisfied, shall destroy or dispose of the food.

(4) Any costs incurred in connection with the destruction or disposal of food under this section shall be borne by the owner of the food and legal proceedings may be instituted for the purpose of recovery of such costs.

(5) The Minister may make Regulations prescribing procedures for the identification, assessment and control of food fraud.

26. 26. Limiting or banning substances or processes in food

(1) The Food Safety Service may establish food requirements based on the standards issued under the Standards Act 2017 on —

- (a) the presence of additives, biological or chemical contaminants and other residues; and
- (b) the types of food processes.

(2) The Food Safety Service may ban or set limits on the presence in food of additives, contaminants, veterinary drugs, fertilizers, pesticides and other residues on the basis of a risk-based approach.

27. Information to be provided to public

(1) A food inspector shall immediately notify the Director of the Food Safety Service where action is taken by the food inspector, in instances where it appears that any food is likely to harm or cause harm to human health.

(2) The Director of the Food Safety Service shall immediately notify the relevant governmental entities and other entities so that all measures necessary to ensure the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures, are carried out.

28. Emergency response plan and early warning system

(1) The Food Safety Service [in collaboration with] other relevant governmental entities, national non-governmental entities and regional authorities shall, in order to enable an effective and rapid response to food borne diseases, hazards and emergencies, implement —

- (a) mechanisms for an early warning system; and
- (b) a food safety emergency response plan.

(2) The food borne emergency response plan implemented under subsection (1)(b) must include the creation of a multi-sectoral and multi-disciplinary response team specific to the nature of the emergency, led and coordinated by the Food Safety Service, and shall contain a clear structure for command and implementation.

29. Emergency measures

(1) A person who reasonably suspects that a food hazard or an outbreak of a food borne disease exists or is imminent shall as soon as possible notify the Food Safety Service.

(2) Where the Food Safety Service reasonably believes that a food hazard or an outbreak of a food borne disease exists on the basis of a risk-based approach, the Food Safety Service may undertake any emergency response measures it considers necessary to eliminate the risk to public health and safety, including —

- (a) declaring in the print and electronic media, a food safety emergency;
- (b) prohibiting or stipulating conditions on the production, processing, handling or sale of the food suspected to be hazardous;
- (c) causing any food to be tested or examined as prescribed;
- (d) recalling food that has been distributed for sale or consumption;
- (e) cause any food to be held or isolated in any place, and prohibit the removal of food from that place for such time as prescribed;
- (f) ordering and monitoring the destruction of the food suspected to be hazardous;
- (g) requiring the making of alterations to structures and layout of food business premises;
- (h) requiring the disposal of food or the treatment of premises;
- (i) ordering the summary closure of food business premises, in accordance with section 30.

(3) The owner of the food shall be responsible for the costs associated with the taking of any measures that are required under subsection (2) and the Food Safety Service may institute legal proceedings to recover any such costs.

PART IV

FOOD BUSINESSES AND STREET FOOD VENDING

30. Licensing of food business

(1) A person shall not operate a food business except by virtue of a food business licence granted under subsection (5).

(2) A person may apply to the Food Safety Service for a food business licence, in the form and manner prescribed.

(3) An application under subsection (1) must be accompanied by the prescribed information and supporting documents and shall be submitted together with the prescribed fee.

(4) A food inspector shall carry out an inspection of the premises indicated in the application, and shall evaluate the application on the basis of the prescribed criteria.

(5) Where the Food Safety Service is satisfied that prescribed requirements for a food business are met, the Food Safety Service shall grant to an applicant a food business licence in the prescribed form, subject to such terms and conditions as the Food Safety Service may impose.

(6) The terms and conditions of a licence granted under subsection (5) shall include —

- (a) that the food business operator shall grant access to the food business premises for the purposes of inspection at all times during hours of operation;
- (b) restrictions on the areas in which food may be prepared;
- (c) the obligation of food handlers employed in the food business to submit medical certificates as required under this Act;
- (d) that except where the food preparation activity is prescribed as low risk, preparation of food in a dwelling house is only permitted where the food is prepared in a purpose-built isolated or separate unit in the dwelling house;
- (e) any other conditions as may be prescribed.

(7) Where the Food Safety Service considers that prescribed requirements for a food business are not met, the Food Safety Service shall deny the applicant the licence and provide the reasons in writing.

(8) The Food Safety Service shall —

- (a) assign to each food business operator a food business identification number as determined by the Food Safety Service;
- (b) assign a location identifier that identifies and distinguishes each of the locations from which the food business operator grows, produces or distributes its food;
- (c) issue supplementary rules and record keeping requirements for particular food sectors where appropriate, for ensuring the effectiveness of the traceability system.

(9) The Food Safety Service shall —

- (a) maintain an up-to-date register of food business operators that includes the name and address of each food business and the name and current contact information for each food business operator; and

(b) keep the register under subsection (1) open to inspection by the public at the office of the Food Safety Service at all reasonable times.

(10) The Food Safety Service may conduct informational or training sessions on the requirements under the traceability system for capacity building for food business operators, regulatory officials and the public.

(11) A food business operator shall display his or her or its licence issued under subsection (5) in a prominent place on the premises in respect of which the licence is issued.

(12) This section does not apply to street food.

31. Suspension, revocation and cancellation of licences

(1) The Director of the Food Safety Service may suspend or revoke a food business licence where he or she is satisfied that —

(a) the food business operator has committed a serious violation of, or has a history of repeated violations of this Act or the conditions of the licence; and

(b) it is in the public interest to do so.

(2) Where the Director proposes to suspend or revoke a licence, the Food Safety Service shall give the holder of the licence at least 28 days' notice of —

(a) the intention to do so;

(b) the terms of the suspension or revocation; and

(c) the grounds upon which the suspension or revocation is proposed to be made.

(3) Before the Director takes an action proposed under subsection (2), he or she shall consider any representations made by the holder of the licence before the expiration of the notice.

(4) Notwithstanding subsection (2), the Director shall take immediate action to suspend or revoke a food business licence where the risk to public health requires immediate action.

(5) The Director may cancel a food business licence at the written request of the food business operator.

(6) A person whose licence is suspended or revoked under subsection (1) may appeal to a judge in chambers, within 14 calendar days of receipt of service of notification of the suspension or revocation, in accordance with the procedure under section 30.

(7) Where the Director revokes or cancels a food business licence under this section, the food business operator shall surrender the food business licence to the Food Safety Service —

(a) where no appeal is made under subsection (6), within 3 business days of service on the food business operator of written notice of the revocation or cancellation; or

- (b) where an appeal is made under subsection (6), within 3 business days of the service of the appeal decision on the food business operator.

32. General obligations of food business operator

(1) A food business operator has primary responsibility for ensuring the safety of food that is the subject of his or her or its food business.

(2) A food business operator shall ensure that appropriate food safety procedures are identified, implemented, maintained and reviewed by —

- (a) analysing the potential food hazards in the operations of the food business;
- (b) identifying the critical points in the operations under paragraph (a) where food hazards may occur;
- (c) implementing effective control and monitoring procedures at the critical points identified under paragraph (b); and
- (d) reviewing the analysis of food hazards, the critical points and the control and monitoring procedures periodically, and whenever the operations of the food business change.

(3) In respect of any food handler in their employment, a food business operator shall ensure —

- (a) that the person has received a food handler's certificate in accordance with section 35;
- (b) that the food handler is appropriately supervised and instructed commensurate with their work activities; and
- (c) the health status of the food handler does not pose a risk to the safety of food.

(4) A food business operator shall allow access to premises and records by food inspectors lawfully carrying out their duties under this Act.

(5) A food business operator shall keep on the premises written documentation of the food safety procedures under subsection (2) and shall make such documentation accessible to food handlers employed in the food business.

(6) A food business operator shall keep records of the food business operations under this Act and make available to the Food Safety Service, the prescribed records for inspection.

33. Street food vending

(1) A person shall not work in street food vending except by virtue of a food handler's certificate issued by the Food Safety Service under section 35.

(2) A person who wishes to work in street food vending shall —

- (a) register with the Food Safety Service; and
- (b) obtain a food handler's certificate.

34. Certificate to work as a food handler

(1) A person shall not work as a food handler except by virtue of a food handler's certificate issued under subsection (2).

(2) A person may make an application to the Food Safety Service for a food handler's certificate in the prescribed form.

(3) On an application made by a person under subsection (2) the Food Safety Service shall issue the person with a food handler's certificate in the prescribed form upon —

- (a) successful completion of food safety and hygiene practices training carried out by or authorised by the Food Safety Service; and
- (b) submission of a medical certificate of fitness from a medical practitioner.

(3) A certificate issued under subsection (3) shall include terms and conditions of the grant of the certificate including —

- (a) that the food handler shall submit to a health examination by a medical practitioner every six months following the grant of the food handler's certificate;
- (b) that the food handler consents to the disclosure of the food handler's health examination results under paragraph (a) to the Food Safety Service;
- (c) where the food handler prepares street food, that the food handler shall grant access to the premises in which the street food is prepared, for the purposes of inspection, at all reasonable times;
- (d) any other conditions as may be prescribed.

(4) The Director of the Food Safety Service may suspend or revoke a food handler's certificate if —

- (a) the food handler is found by a medical practitioner to be suffering from a communicable disease;
- (b) information given by the food handler in relation to his or her application has been found to be false in any material particular;
- (c) there has been a contravention of this Act or Regulations; or
- (d) there are grounds to believe that the food handler poses a risk to food safety.

(5) The Director of the Food Safety Service may cancel a food handler's certificate at the written request of the food handler.

35. Monitoring of medical conditions

(1) A food handler —

- (a) who knows or suspects that he or she is suffering from or that he or she is a carrier of a disease contained in the list of diseases published under subsection (5);
- (b) who is afflicted with an infected wound, a skin infection, sores, diarrhoea or with an analogous medical condition; or
- (c) in relation to whom there is any likelihood of him or her directly or indirectly contaminating food with pathogenic micro-organisms,
- (d) shall report that knowledge, suspicion or affliction to the operator of the food business at which he or she works and shall immediately cease work until he or she receives a medical certificate in accordance with subsection (2).

(2) A food business operator shall, upon receipt of a report under subsection (1), report that fact to the Food Safety Service and not permit the food handler to perform functions or duties related to the handling of food until, a medical practitioner certifies—

- (a) that the person is free from any infectious or communicable disease likely to contaminate food; and
- (b) that there is no likelihood of the food handler directly or indirectly contaminating food with pathogenic micro-organisms.

(3) Where the results of a medical examination indicate that the person is suffering from a disease likely to contaminate food, the Food Safety Service may, for the purpose of safeguarding the public health, by notice in writing—

- (a) prohibit that person from being employed as a food handler; and
- (b) suspend that person's food handler's certificate,

until the Food Safety Service receives a medical certificate in accordance with subsection (2).

(4) A person shall not disclose medical information pertaining to a food handler, or a food handler's medical examination certificate or results, except in accordance with, and for the purposes stipulated in this Act, or with the consent of the food handler.

(5) The Food Safety Service shall publish and keep updated, the list of diseases for which reporting is required under subsection (1)(a).

36. Medical practitioners' duty to report

(1) A medical practitioner shall report every incidence of a food-related illness to the Food Safety Service and the Chief Medical Officer.

(2) A report by a medical practitioner under subsection (1) must not reveal the name, or any other identifying information, of the patient in relation to whom the report is made.

37. Selling food not complying with food safety requirements

(1) A person shall not sell for human consumption any food which fails to comply with food safety requirements.

(2) For the purposes of this Part, food fails to comply with food safety requirements if —

(c) it has been rendered injurious to health by means of adulteration or other means;

(a) it is unfit for human consumption;

(b) it is so contaminated, whether by extraneous matter or otherwise, that it would not be reasonable to expect it to be used for human consumption in that state.

(3) Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it is presumed for the purposes of this section, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(4) In determining whether any food is unfit for human consumption, regard shall be had to —

(a) the normal conditions —

(i) at each stage of production, processing and distribution of the food, and

(ii) of use of the food by the consumer; and

(b) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.

(5) In determining whether any food is injurious to health, regard shall be had to —

(a) the probable immediate, short-term or long-term effects of the food on the health of a consumer and subsequent generations of the consumer;

(b) the probable cumulative toxic effects of the food; or

(c) any particular health sensitivities of a specific category of consumers if the food is intended for that category of consumers.

(6) In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

38. Labelling and packaging

(1) Any packaged or pre-packaged food intended for sale in Antigua and Barbuda shall comply with labelling and packaging requirements under the Standards Act 2017.

(2) Where food other than packaged food is displayed for sale, it must be labelled as prescribed.

39. Repackaging of food

Repackaged food intended for sale in Antigua and Barbuda shall comply with repackaging requirements under the Standards Act 2017.

40. Falsely describing food

A person shall not sell food with a label, whether or not attached to or printed on the wrapper or container of the food, or publish or cause to be published, an advertisement, which —

- (a) falsely describes the food; or
- (b) is likely to be misleading as to the nature or substance of the food.

PART V

IMPORT AND EXPORT OF FOOD

41. Import requirements

(1) Any food imported into [insert the name of State] shall comply with the requirements of this Act.

(2) A person shall not import food into [insert name of State] except in accordance with this section.

(3) A person who wishes to import food may apply to the Food Safety Service in the prescribed form, and accompanied by the prescribed fee.

(4) An application under subsection (2) must be accompanied by —

- (a) prescribed certificate of analysis, certificate of conformity or other required certification from the exporting country which indicates that the requirements of this Act have been met; and
- (b) an agreement or contract between the importer and trading partner in the country of origin which indicates that food which is subsequently found not to be safe or not to meet the requirements of this Act will be re-shipped to the country of origin, or to

another place the Food Safety Service may approve, or that the food will be otherwise destroyed.

(5) The Food Safety Service shall review an application under subsection (2) to determine whether —

- (a) the importer has complied with the requirements of this Act;
- (b) a physical inspection or sampling shall be made by the Food Safety Service at the port of entry; and
- (c) the food may be released without physical inspection or sampling, to the importer.

42. Import inspections

(1) A decision made by a food inspector to collect a sample or to inspect food that is to be imported shall be based on the basis of risk informed by —

- (a) the nature of the food;
- (b) the past history of the commodity or the importer.

(2) Where a food inspector —

- (a) determines that an inspection of the food is required —
 - (i) the food shall not be released before a physical inspection, and where necessary, the collection of a sample for analysis is taken, and
 - (ii) the containers, packaging material, labelling and ingredients of food imported into [insert name of State] may also be subject to sampling and inspection; and
- (b) takes any sample under this section, the Food Safety Service shall send the sample to an official laboratory for analysis.

(3) Where a sample is not required, upon completion of documentary inspection or physical inspection where it is required, where the food meets import requirements under this Act, the food inspector shall release the food shipment to the proper Customs officer for clearance.

(4) Where the taking of a sample of food from a consignment is required and the Food Safety Service finds that the sample —

- (a) complies with the requirements of this Act, the Food Safety Service shall authorize the release of the consignment to the proper Customs officer and shall submit a written notice to the proper Customs officer and the importer to that effect;
- (b) does not comply with the requirements of this Act, the Food Safety Service —
 - (i) shall detain the consignment and issue a written notice of detention to the proper Customs officer and to the importer, or
 - (ii) may issue a written notice ordering the immediate destruction of the food.

(5) Inspections shall be carried out —

- (a) during the normal business hours of the Food Safety Service or at any other reasonable time on agreement by the Food Safety Service;
- (b) either –
 - (i) at the port of entry, or
 - (ii) at the final destination in consideration of the perishability of the food, subject to prior approval and agreement of the Food Safety Service.

43. Re-labelling and reconditioning

(1) Where any food sought to be imported would, if sold in [insert name of State], constitute a contravention of this Act, the Director of the Food Safety Service may permit its importation solely for the purpose of re-labelling or reconditioning as prescribed if to do so would bring the food into compliance with this Act within a specified period.

(2) In the event that any re-labelling or reconditioning permitted under subsection (1) is not carried out within the specified period, the Director of the Food Safety Service may direct the importer to re-ship the food to the country of origin, or destroy the food at the importer's expense.

(3) Where an importer fails to re-ship or destroy imported food as required under subsection (2), the Director of the Food Safety Service may order the destruction of the imported food.

(4) Any costs incurred under this section shall be borne by the importer.

44. Export certification

(1) A person shall not export food except in accordance with this section.

(2) A person may apply to the Food Safety Service for an inspection in the prescribed form and accompanied by the prescribed fees.

(3) A decision made by the Food Safety Service to collect a sample or to inspect food that is to be exported shall be based on risk analysis informed by —

- (a) the nature of the food;
- (b) the past history of the commodity or the exporter.

(4) Following an inspection of the food, the food business premises, records and any other aspect relating to the food as may be required, and upon consideration of the requirements of the importing country, the Food Safety Service shall—

- (a) issue an export certificate and any other required documentation, where the food meets the requirements; and
- (b) where the food does not meet the requirements, deny issuance of an export certificate and other documentation and provide the reasons in a written notice to the exporter, including where relevant, any remedial action or treatment that may be taken.

(5) Where the exporter takes the remedial action or treatment under subsection (4)(b), the exporter may apply for re-inspection by the Food Safety Service.

45. Report on activities

(1) Every importer and exporter shall, not later than forty-five days after the end of each operating year of the business of the importer or exporter, as the case may be, submit to the Food Safety Service a report relating to the activities for the previous calendar year including —

- (a) types and quantities of food imported or exported;
- (b) prescribed data concerning shipments of food;
- (c) food found by an importing country not to be in compliance with the statutory requirements of the importing country;
- (d) food sought to be imported that was detained or rejected and destroyed;
- (e) a summary of any incidents or accidents that may have occurred and any action taken regarding food found not to be safe for export;
- (f) such other information as may be prescribed.

(2) The first report for the purposes of subsection (1) shall be submitted to the Food Safety Service no later than 45 days after the end of the operating year commencing within one year of the commencement of this Act.

(3) In addition to the reporting requirement under subsection (1), every importer and exporter has a duty of continuous reporting to the Food Safety Service, throughout the year, the information required to be reported under subsection (1).

PART VI

TREATMENT OF GOODS IN FREE CIRCULATION IN THE ECONOMIC UNION AREA

46. Treatment of goods moving within the Economic Union Area

(1) Where food has been found compliant with all applicable import requirements under this Act, the Customs Control and Management Act 2013 and any other relevant enactments at the first port of entry in the Economic Union Area, the food may circulate freely within the territory of first entry and the Economic Union Area.

(2) Where food is dispatched from an OECS Protocol Member State to Antigua and Barbuda, the food may be subject to inspection in accordance with the procedures under section 43 on arrival in Antigua and Barbuda, unless the food is accompanied by a food health certificate from the Competent Authority of the OECS Protocol Member State of dispatch, issued within 72 hours of its arrival in [Antigua and Barbuda.

47. Food Health Certificate

(1) A person who intends to dispatch food Antigua and Barbuda may submit the food for examination by the Food Safety Service.

(2) Following an inspection of the food and any records or other aspect relating to the food as may be required, the Food Safety Service shall —

- (g) where the food meets the requirements of this Act, issue a food health certificate in the form prescribed in Schedule 3 upon payment of the prescribed fee; and
- (h) where the food does not meet the requirements, deny issuance of a food health certificate and provide the reasons in a written notice to the person intending to dispatch the food, including where relevant, any remedial action or treatment that may be taken.

(3) Where the person takes the remedial action or treatment under subsection (2)(b), the person may apply for re-inspection by the Food Safety Service.

(4) Where the Food Safety Service issues a food health certificate under this section, the Food Safety Service may send advance notice to the receiving OECS Protocol Member State.

48. Network of agriculture, health and food safety competent authorities

(1) The Food Safety Service shall liaise with the competent authorities for agriculture, health and food safety in Antigua and Barbuda and OECS Protocol Member States to form a network for the purposes of —

- (a) developing an agriculture, health and food safety risk management system for the Economic Union Area;
- (b) making recommendations for adoption by OECS Protocol Member States of agriculture, health and food safety Regulations, standards, guidelines and protocols in keeping with international requirements;
- (c) promoting the harmonisation of sanitary and phytosanitary standards in the Economic Union Area;
- (d) making recommendations for the modernisation of the agriculture, health and food sectors in OECS Protocol Member States;
- (e) developing and maintaining a database in respect of key aspects of agriculture, health and food safety in the Economic Union Area;

- (f) sharing with competent authorities and other relevant agencies, statistics and other relevant information required under this Act, from the database in paragraph (e); and
- (g) monitoring that sanitary and phytosanitary measures are implemented in a transparent and non-discriminatory manner.

(2) The Food Safety Service, as part of the network of competent authorities under subsection (1), shall liaise with, accept advice and implement recommendations from CAHFSA, in relation to food safety matters.

49. Application of common procedures, principles and risk management system

(1) The Food Safety Service shall collaborate with CAHFSA for the purposes of developing and implementing a common Risk Management System, which includes —

- (a) a common risk classification matrix;
- (b) common risk procedures;
- (c) common inspection procedures;
- (d) common import requirements and procedures in respect of certification, licensing and import permits;
- (e) a common pest list; and
- (f) a common list of prohibited products for importation.

(2) The common Risk Management System shall be approved by the Minister before implementation.

50. Information Sharing

The Food Safety Service may retrieve, update, and share relevant information required under this Act through —

- (a) the OECS Customs Information System; and
- (b) any alert system developed for use regionally or internationally, and accessible to OECS Protocol Member States.

51. Items not permitted to move freely in the Economic Union Area

(1) The food items listed in Schedule 4 may not circulate freely in the Economic Union Area and are subject to the import and export procedures and requirements under Part V.

(2) The Minister may, in consultation with the Food Safety Service and with relevant Ministers of the other OECS Protocol Member States, by order published in the Gazette, revise Schedule 4 to add, remove and update information related to food items which are not permitted to move freely within the Economic Union Area or a territory therein.

PART VII

ENFORCEMENT

52. Enforcement powers of a food inspector

(1) Where a food inspector has exercised an investigative power under section 9, and has reasonable grounds to believe that any operation or activity in connection with such food is being carried out in violation of this Act, the food inspector may, without warrant or consent —

- (a) enter any food business premises in which food intended for sale or other commercial use is being, or is suspected of being, produced, manufactured, treated, graded, packed, packaged, labelled, stored, handled, prepared, served or sold, or in which any other operation or activity in connection with such food is being, or suspected of being, carried out, and may, for the purpose of determining whether this Act is being violated —
 - (i) examine, make copies of or take extracts from any book, statement or other document found at such premises which refers to or is suspected of referring to such food, and demand from the owner or any person in charge of the premises an explanation of any entry in it; and where such record or document is kept by means of computer to have access to it or any associated apparatus or material;
 - (ii) seize any food, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Act, providing a signed receipt in the prescribed form detailing the reasons for such action, which shall be countersigned immediately by the food business operator or owner of such premises, food or object;
 - (iii) destroy or dispose of seized food.

(2) A food inspector exercising his or her duties under this section, may request the presence and assistance of a [law enforcement] officer as he or she considers necessary.

(3) Where a food inspector takes an action under subsection (1), he or she shall prepare a written notice and provide a copy to the food business operator or owner of the premises as prescribed.

(4) Where a food inspector has reasonable grounds to believe that a food business operator or owner of the premises has failed to comply with this Act, he or she may serve a notice on that owner or food business operator —

- (a) stating the food inspector's grounds for believing that this Act is not being complied with;
- (b) specifying the measures which the food inspector deems that the owner or food business operator shall take in order to remedy the failures referred to in paragraph (a);
- (c) requiring the owner or food business operator to implement those measures, or measures having an equivalent effect, within the time period specified in the notice.

(5) In carrying out any duty under this section, a food inspector shall identify himself or herself as a food inspector by showing his or her identification card or other proof of his or her appointment or designation as a food inspector.

53. Objects of Inspection

For the purposes of this Act, food inspectors may inspect the following —

- (a) food, raw or processed, including as imported or exported consignments of food;
- (b) food ingredients, additives, disinfectants and any substances or processes used in the production, manufacturing, handling or packaging of food;
- (c) food business premises and their surroundings and installations, as well as means of transportation, equipment and materials;
- (d) personnel employed in the food business;
- (e) packaging material;
- (f) cleaning, disinfecting and maintenance at food business premises;
- (g) food labels;
- (h) all records and documents related to the food production chain; and
- (i) such other objects as may be prescribed.

54. Duty not to disclose information

(1) A food inspector, food analyst, or other person or governmental entity under this Act shall not disclose to a third party any information acquired in the performance of his or her duties unless in accordance with this Act or otherwise ordered to do so in writing by the Director of the Food Safety Service, the Minister or by a court.

(2) Where a food inspector, food analyst or other person or governmental entity under this Act obtains information from a person who asserts a claim that the information provided should be treated as a trade secret or as confidential business information, the food inspector, food analyst, or other person or entity to whom or to which the information is disclosed, shall treat that information as confidential.

55. Food unfit for consumption

(1) Notwithstanding the responsibility of food business operators to recall products under this Act, where a food inspector reasonably believes that any food is unfit for human consumption or is likely to cause harm to human health, and that the food business operator fails to withdraw the product from the market, the food inspector shall —

- (a) seize and seal such food, and issue a notice to the owner or the food business operator that the food or any specified portion of it is temporarily not to be sold, removed, manipulated, tampered with or otherwise altered without the authorisation of the food inspector; or
- (b) issue a written notice —
 - (i) ordering the temporary removal of the food to a specified place,
 - (ii) ordering the immediate destruction of the food,
 - (iii) temporarily detaining the food and leaving it in the place,
 - (iv) prohibiting the sale of the food.

(2) Where any action is taken under subsection (1) because of a risk to human health, the food inspector shall immediately notify the Food Safety Service which shall take action to notify other relevant governmental entities and non-governmental entities so that all measures necessary to ensure public safety and the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures, may be adopted.

(3) As soon as practicable, and in any event not later than fourteen days, a food inspector acting under subsection (1) shall review the situation to determine whether the circumstances that caused the issue of the notice no longer exist, and where the food inspector —

- (a) finds this to be the case, he or she shall withdraw the notice, and where appropriate, allow the release of any food from the place where it is stored;
- (b) finds this not to be the case, he or she may order that any such food be destroyed or disposed of so as to prevent its use for human consumption, and shall supervise the destruction or disposal.

56. Certificate of condemnation

Where a food inspector orders food to be destroyed or disposed under section 56(3)(b), the food inspector shall issue a certificate of condemnation in the prescribed form to the food business operator or owner of the premises, informing the food business operator or owner of the premises of the intention to dispose of or destroy the food and the form of disposal or destruction.

57. Improvement notice

(1) Where a food inspector reasonably suspects that a food business operator fails or neglects to comply with the requirements of this Act, or the terms of the licence granted to the food

business operator under this Act, the food inspector may serve on the food business operator an improvement notice under subsection (2).

(2) An improvement notice shall —

- (a) state the food inspector's grounds for suspecting that the food business operator is failing to comply with the food safety requirements or the terms of the food business operator's licence;
- (b) specify the matters which constitute the food business operator's failure to comply;
- (c) specify —
 - (i) the measures which, in the food inspector's opinion, the food business operator must take to prevent, decrease, control or eliminate a food safety risk that has resulted from or is likely to result from anything that the food business operator has done or not done and to ensure compliance, or
 - (ii) that measures at least equivalent to those indicated must be taken;
- (d) specify the period within which the measures referred to in paragraph (c) must be taken;
- (e) specify the time within which the person must report to the food inspector any measures taken; and
- (f) specify that the food business operator to whom the improvement notice is directed has the right to request a hearing by the Food Safety Service.

(3) A food business operator who is served with an improvement notice under this section shall comply with the improvement notice within the period specified in the improvement notice.

58. Emergency hygiene prohibition notices

(1) Where a food inspector is satisfied that a health risk exists with respect to any food business, the food inspector may, by a notice served on the food business operator, impose an emergency hygiene prohibition.

(2) The criteria for determining a health risk for the purposes of subsection (1) shall be prescribed.

(3) Any person to whom an emergency hygiene prohibition has been issued shall comply immediately with the requirements stipulated therein.

59. Information to members of the public

The Director of the Food Safety Service shall —

- (a) at the request of the public or on his or her own initiative, provide and disseminate information and guidance concerning the implementation of this Act;

(b) ensure the dissemination of all laws concerning food safety.

60. Offences and penalties

(1) A person who knowingly, whether directly or indirectly through an employee or agent —

- (a) imports or exports food in contravention of this Act;
- (b) fails to ensure that all personnel of a food business follow prescribed procedures;
- (c) operates a food business without a licence or other authorisation required by this Act, or constructs food business premises or operates a food business except as specified under this Act;
- (d) engages in street food vending without being registered and without a certificate or other authorisation required under this Act;
- (e) fails to submit a report to the Food Safety Service required under this Act;
- (f) fails to provide access, samples or information to a food inspector upon request, where the person is under an obligation to do so;
- (g) tampers with any samples taken under this Act or breaks any seal or alters any markings made by a food inspector without permission;
- (h) alters, forges, defaces, or destroys any document issued under this Act;
- (i) knowingly or recklessly provides information to a food inspector which is false, for the purpose of obtaining any document under this Act;
- (j) in relation to food intended for human consumption, engages in food fraud or knowingly sells or possesses food upon which food fraud has been committed;
- (k) works as a food handler without a food handler's certificate or other authorisation required under this Act;
- (l) sells for human consumption food which fails to comply with food safety requirements;
- (m) assaults, obstructs, resists, delays, refuses lawful entry to, intimidates or fails to ensure the safety of or otherwise interferes with a food inspector in the performance of his or her duties;
- (n) discloses medical information or medical examination results of a food handler, except as provided under this Act;
- (o) impersonates or falsely represents himself or herself to be a food inspector;
- (p) fails to comply with any lawful requirement of a food inspector, or with any order or direction lawfully made or granted under this Act;

- (q) acts as a food analyst while having an actual or reasonably perceived interest in an action to be taken by the Food Safety Service;
- (r) fails to surrender a food business licence where the person is under an obligation to do so;
- (s) being a medical practitioner, fails to report an incident of a food-related illness to the Food Safety Service and the Chief Medical Officer,

commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars (\$25,000.), or to imprisonment for a term not exceeding three (3) years, or to both fine and imprisonment.

(2) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, such director, manager, secretary or other officer as well as the body corporate is guilty of that offence.

(3) A person who is found guilty of an offence under subsection (2) is liable to the same extent as a person who commits the offence under subsection (1).

61. Fixed penalty offences

(1) The offences listed in Schedule 5 are designated fixed penalty offences for the purposes of this Act.

(2) The Minister may make Regulations prescribing the penalties for fixed penalty offences in Schedule 5 which shall in no case exceed one thousand dollars (\$1,000.).

(3) Where on any occasion a food inspector finds a person who the food inspector has reason to believe is committing, or has committed, a fixed penalty offence, he or she may serve on that person a fixed penalty notice in the prescribed form.

(4) Where a food inspector has served a fixed penalty notice on a person, the food inspector shall –

- (a) inform the person that he or she has committed an offence under this Act; and
- (b) notify the person that, if he or she does not wish to be prosecuted for the alleged offence in court, he or she may pay to the clerk of the Magistrate's Court the fixed penalty prescribed for the offence in the fixed penalty notice within the time specified.

(5) A person on whom a fixed penalty notice is served may decline to be dealt with under this section and where he or she fails to pay the fixed penalty within the time specified in the fixed penalty notice, or within such further time as may be allowed in a particular case, his or her conduct constitutes a declination to be dealt with under this section.

(6) A food inspector who serves a fixed penalty notice on a person alleged to have committed a fixed penalty offence shall send a duplicate of the fixed penalty notice to the Magistrate's Court of the district in which the offence is alleged to have been committed.

(7) Where the fixed penalty is not paid within the time specified in the fixed penalty notice, the duplicate sent to the Magistrate's Court under subsection (6) constitutes a complaint laid before the Magistrate to institute proceedings against the person named in the notice.

(8) A fixed penalty notice shall be signed by the food inspector and shall specify the following —

(a) the date, time and place of service of the fixed penalty notice;

(b) the section of this Act creating the offence alleged, and such particulars of the offence as are required under this Act;

(c) the amount of the fixed penalty;

(d) the time within which the fixed penalty may be paid which shall in no case exceed 21 business days; and

(e) the clerk of the Magistrate's Court to whom, and the address at or to which, the fixed penalty may be paid or remitted.

(9) Where a fixed penalty is not paid within the time specified, proceedings in respect of the offence specified in the fixed penalty notice shall thereafter proceed in the manner prescribed by the Magistrate's Code of Procedures Act.

(10) A person upon whom a fixed penalty notice is served may pay the fixed penalty in accordance with the fixed penalty notice.

(11) Where the fixed penalty is paid in accordance with the fixed penalty notice, no person shall then be liable to be convicted for the offence for which the fixed penalty notice was served and the complaint laid before the Magistrate is null and void.

(12) In any proceedings for a fixed penalty offence, a certificate that payment of the fixed penalty was or was not made to the clerk of the Magistrate's Court by the date specified in the certificate shall, if the certificate purports to be signed by the clerk, be sufficient evidence of the facts stated, unless the contrary is proved.

62. Procedure for offences

Where the Director of the Food Safety Service reasonably believes that a person has contravened any of the provisions of this Act, he or she shall report the matter to the police.

63. Forfeiture

(1) Where a person is convicted of an offence under this Act the court may, on its own motion or at the request of any party to the proceedings, in addition to any penalty imposed, order

that any food or other thing by means of or in relation to which the offence was committed or any proceeds realized from its disposition, be forfeited to the Crown.

(2) Where the owner of a food, or other thing to which a conviction relates, is convicted of an offence under this Act and a fine is imposed, the court may order that the food or other thing —

(a) be detained until the fine is paid; or

(b) be sold in satisfaction of the fine.

(3) The owner under subsection (2) may appear before the court at the hearing of the application and show cause why the food or other thing to which the conviction relates should not be forfeited.

(4) Except by an order of the court under subsection (2), where the court does not order the forfeiture of the food or other thing, then the food or other thing must be returned to the owner.

(5) Any food or other thing ordered to be forfeited under this Act, at the expiry of 3 months following the order for forfeiture and if no appeal is lodged, may be destroyed, sold, leased or donated to a charitable organization.

(6) The proceeds of any sale of any food or other thing forfeited in accordance with this section shall be deposited into the Consolidated Fund.

64. Evidence

(1) In any prosecution for an offence under this Act, a declaration, certificate, report or other document purporting to have been signed on behalf of the Food Safety Service, food inspector, food analyst or police officer is, in the absence of evidence to the contrary, proof of the matters asserted in it.

(2) In any prosecution for an offence under this Act, a copy of an extract from any record or other document made by the Food Safety Service, food analyst, a food inspector or police officer under this Act, that is certified as a true copy or extract, is admissible in evidence.

65. Right of appeal

(1) Except as provided under sections 30 and 32, any person aggrieved by an action or decision by a food inspector or the Food Safety Service may, within 14 business days from the date of the action or decision, appeal in writing to the Minister.

(2) The Minister shall issue his or her decision in writing, within 28 days of submission of an appeal under subsection (1).

(3) The Minister may authorise a public officer in his or her Ministry not below [senior management rank], in writing, to consider and decide an appeal made under subsection (1) on his or her behalf, and the decision of the delegate is deemed to be the decision of the Minister.

(4) A person who is dissatisfied with the decision of the Minister may appeal to the High Court within 21 calendar days of receipt of service by the person of the decision of the Minister.

(5) An appeal under subsection (4) shall be made in accordance with the rules of the High Court.

(6) An appeal made under subsection (4) is final.

66. Offences by officials and penalties

(1) A food analyst, food inspector or other staff of the Food Safety Service who —

- (a) seizes food for any reason other than those specified in this Act;
- (b) discloses any information acquired in the course of exercising his or her official functions under this Act except in accordance with this Act or where required to do so by his or her supervisor in the course of official duties, or where ordered to do so by a court;
- (c) directly or indirectly procures any monetary or other benefit from a person affected by the exercise of official powers under this Act;
- (d) agrees to do or abstains from doing, permits, conceals, or connives in doing, any act or thing contrary to the proper execution of his or her official duties under this Act; or
- (e) otherwise abuses or acts outside the scope of his or her duties,

commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars (\$25,000.), or to imprisonment for a term not exceeding three (3) years or to both fine and imprisonment.

(2) Upon conviction for an offence under subsection (1) the person convicted shall be liable to dismissal and may be ineligible for reappointment and shall be subject to such other penalty as is applicable to public officers.

67. Good faith defence

No staff of the Food Safety Service, food analyst or official or reference laboratory or any governmental entity is liable to suit for damages or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

PART VIII

MISCELLANEOUS

68. Service of notice

A notice or other document to be served on a person under this Act may be served —

- (a) by leaving the notice or other document with that person;

- (b) by delivering it or sending it in a prepaid letter addressed to that person at his or her usual or last known place of abode or business;
- (c) in the case of a body corporate, by delivering it to the registered or principal office or by sending it in a prepaid letter addressed to that office; or
- (d) in the case of a document to be served on the owner or occupier of any premises, if the owner or occupier cannot be found, by affixing the document in a conspicuous place on the premises.

69. Documents

(1) A document required to be furnished to the Minister, the Food Safety Service, or a food inspector under this Act or any Regulations or Orders made thereunder may be furnished in electronic form.

(2) Where a document referred to in subsection (1) is furnished in electronic form, an original hard copy of the document must be furnished to the Minister, the Food Safety Service, or a food inspector within a reasonable period after the document is furnished in electronic form.

70. Presumptions

(1) Any food or food ingredient or additive commonly used for human consumption shall, if offered for sale or distributed for the purposes of sale or found on premises used for the preparation, storage or sale of that food, be presumed, unless the contrary is proved, to be intended for human consumption.

(2) Where any person demands any food by a name prescribed for a food for which there is a mandatory standard prescribed, he or she is deemed to have demanded food which complies with that mandatory standard.

71. Duty of other authorities to assist and cooperate

Customs, ports postal, police, consumer protection and other governmental entities, shall assist food inspectors in the performance of their functions under this Act by providing such assistance as the Food Safety Service may request from time to time.

72. Regulations

(1) The Minister may make Regulations for the purposes of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations for the following —

- (a) the procedures, criteria for approval and required forms for the issuance of certificates, licences and other authorisations required by the Food Safety Service

under this Act, including the expiry, renewal, cancellation, suspension and revocation and conditions attached;

- (b) the procedures to be followed by food inspectors, food analysts and official laboratories in the exercise of their functions under this Act;
- (c) the procedures for audit of the Food Safety Service and governmental entities with a role in food safety control;
- (d) the production, manufacture, storage, transport, packing, packaging, labelling and sale of all types of food, including dietetic food or food intended for infants or other population groups;
- (e) the preparation, handling and serving of food, including technical requirements, standards, procedures or rules for good hygiene practices;
- (f) the requirements and obligations of food business operators;
- (g) the location, design, construction, alteration, operation, including hours of operation and maintenance, of premises, facilities, equipment and conveyances used in any food business;
- (h) procedures for the recall of food and traceability systems;
- (i) the control of street food;
- (j) procedures and conditions for the issuance of export certificates;
- (k) the requirements for the designation of official and reference laboratories;
- (l) the establishment, operation and maintenance of laboratories or laboratory activities;
- (m) the use or prohibition of chemicals, chemical compounds, hormones or additives in the production, harvesting, handling and processing of food;
- (n) the import and export of foods, including any documentation, procedures and inspections required;
- (o) the treatment, destruction and disposal of any food unfit for human consumption;
- (p) prescribing procedures for the identification, assessment and control of food fraud;
- (q) the qualifications, education, training and certification of a food inspector, food analyst or any other staff of the Food Safety Service;
- (r) designation of offences subject to the fixed penalty procedure under section 62;
- (s) the forms to be used for the purposes of this Act;
- (t) prescribing low risk food for the purposes of preparation in a dwelling house;

- (u) prescribing conditions for issuing of food business operator licences and food handlers' certificates;
- (v) the fees payable in respect of this Act; and
- (w) any other matter required to be prescribed under this Act or for the better carrying out of the provisions of this Act.

(3) The Minister shall consult with governmental entities, the food industry, consumer groups and such other persons as may have an interest in or be affected by the proposed Regulations during the development of Regulations.

73. Repeal and savings

(1) The [Reference to repealed provisions on food safety matters found in various Acts or Food Safety Act, if this exists] is/are hereby repealed.

(2) [General reference to savings, if any].

(3) An order issued by the Minister may revoke or modify any licence or certificate granted by authority of the legislation referred to in subsection (1).

(4) All regulations [notices or orders] in effect on the coming into force of this Act continue in force as if they were issued under the this Act, except where they conflict with, and until they are replaced by regulations made under, this Act.

74. Act to bind Crown

This Act binds the Crown.

SCHEDULE 1

(section 2)

Part A

OECS MEMBER STATES

Anguilla
Antigua and Barbuda
British Virgin Islands
Commonwealth of Dominica
Grenada
Guadeloupe
Martinique
Montserrat
St. Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines

Part B

OECS PROTOCOL MEMBER STATES

Antigua and Barbuda
Commonwealth of Dominica
Grenada
Montserrat
St. Christopher and Nevis
Saint Lucia
Saint Vincent and the Grenadines

SCHEDULE 2

(Section 7)

NATIONAL FOOD SAFETY ADVISORY BODY

(1) The Minister shall appoint a National Food Safety Advisory Body of no less than eleven members and no more than fifteen members to hold office for a term not exceeding three years under such terms and conditions of service as the Minister may fix in the instrument of appointment.

(2) A member of the Advisory Body is eligible for re-appointment.

(3) The Minister may appoint any person or agency with relevant knowledge or experience to the Advisory Body including persons from the fields of health, testing laboratories, agriculture, fisheries, nutrition, trade, customs, bureau of standards, food processing, food distribution, public health sectors, consumer groups or local government.

(4) The Minister shall, on the recommendation of the Advisory Body, appoint one of the members of the Advisory Body to be the Chairperson.

(5) The Advisory Body shall select from among its members a Deputy Chairperson and a Secretary.

(6) The Advisory Body shall meet at least once in each month and at such other times as the Chairperson determines is necessary for the efficient discharge of its functions.

(7) The Advisory Body shall determine its own procedure and may make rules governing such procedure as are considered necessary.

(8) The Minister may remove a member of the body if the member—

- (a) becomes incapable, by reason of mental or physical incapacity, of carrying out his or her duties;
- (b) is convicted of a criminal offence ;
- (c) is guilty of misconduct in relation to the member's duties;

- (d) is absent, except on providing reasons to the Advisory Body, from all meetings of the body held during two consecutive months or during any three months in any period of twelve months;
- (e) fails to comply with paragraph (9).

(9) Any member of the Advisory Body who has any interest, directly or indirectly, in any matter before the body—

- (a) shall disclose the nature of the interest to the Advisory Body ; and
- (b) shall not take part in any deliberations or decisions of the Advisory Body with respect to that matter.

(10) A disclosure under paragraph 9 shall be recorded in the minutes.

(11) Any member of the Advisory Body other than the Chairperson, may at any time resign his or her office by notice in writing addressed to the Minister and transmitted through the Chairperson and from the date of the receipt by the Minister of such notice such member shall cease to be a member of the Board.

(12) The Chairperson may at any time resign his or her office by giving notice in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such notice by the Minister.

(13) If any vacancy occurs in the membership of the Advisory Body, such vacancy shall be filled by the appointment of another member who shall, subject to this Schedule, hold office for the remainder of the period for which the previous member was appointed.

(14) A vacancy shall be deemed to arise in the membership of the Board in case of—

- (a) the death of a member;
- (b) resignation of a member; or
- (c) the removal of a member by the Minister.

(15) The members of the Advisory Body are eligible for remuneration, whether by way of fees, travelling or other allowances, as the Minister may determine.

(16) The Advisory Body may appoint sub-committees for the purpose of advising it on any specialised area of food safety.

(17) Persons may be appointed to such sub-committee mentioned in paragraph (16) for a period of two years but any person so appointed shall be eligible for reappointment.

SCHEDULE 3

(Section 48)

FOOD HEALTH CERTIFICATE

<p>ANTIGUA AND BARBUDA</p> <p>FOOD SAFETY SERVICE</p> <p>[Insert address and contact details]</p> <p>FOOD HEALTH CERTIFICATE</p>	Certificate Number:
	Date of issue:
	Expiry date:

(For dispatch of food)

I, the undersigned, certify that I have inspected the undermentioned food for dispatch within the Economic Union and the food is wholesome and fit for human consumption.

<p>Food item:</p> <p>Net weight:</p>	<p>Port of dispatch:</p> <p>Port of arrival:</p>
<p>Consignee:</p> <p>Address/contact:</p> <p>State:</p>	<p>Intended end use:</p> <p>Comments:</p>

Dispatched by: Address/contact: Food business cert # (if applicable): State:	Conditions of grant of certificate (if applicable):
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.....

Food inspector
Service]

[seal/stamp of Food Safety

This certificate is valid for a period of 72 hours from the date of issue.

**Certificate to be issued on date of inspection*

SCHEDULE 4

(section 52)

Items which are not permitted to move freely within the Economic Union Area or a territorial jurisdiction therein

[**Note:** Schedule to be populated as and when Protocol Member States agree on items to be included under this Schedule]

SCHEDULE 5

(section 62)

FIXED PENALTY OFFENCES

[Note: Individual Member States to determine]

EXPLANATORY MEMORANDUM

The Food Safety Bill has been developed in keeping with international best practices and standards. As such, the objects of this Bill are:

- to coordinate and integrate food safety at all stages of the food chain from production, to manufacture, to import and consumption of food;
- to ensure food safety while enabling a competitive and commercially supportive environment for food businesses;
- to establish an integrated approach to food safety among the OECS Protocol Member States in order to provide for a more efficient, effective, transparent and coordinated administration throughout the food chain;
- to regulate food quality; and
- to boost confidence in trade in food.

The Bill is a key component of the legal and regulatory framework governing the quality infrastructure and overall safety of food. The Bill also sets out provisions governing the dispatch of food from one OECS Protocol Member State to another and is congruent with the principles and objectives of the Revised Treaty of Basseterre and the Eastern Caribbean Economic Union.

The purpose of the Bill is to provide for food safety and food quality and to protect consumer health, to promote trade in food that is safe and to provide for related matters,

In particular, the Bill:

1. provides for consistency within OECS Protocol Member States, thus enabling free circulation of goods Economic Union Area;
2. establishes the National Food Safety Advisory Body;
3. provides strong emergency and recall powers in relation to food that presents a risk to public health;
4. allows for the application of less prescriptive and outcome based requirements on food businesses, so that businesses have more flexibility to determine the best way to comply with those requirements, while at the same time ensuring that food safety is not compromised;
5. provides for more significant penalties, reflecting the seriousness of a failure to provide safe food;
6. contains comprehensive investigation and enforcement provisions;
7. enables regulation of certain significant primary food production activities where such activities have the potential to impact on the safety of food for human consumption;
8. enables the requiring of food safety programs for high risk food businesses and the auditing of those programs;

9. contains requirements for food businesses to provide government with information that will enable improved monitoring of the safety of food in OECS Protocol Member States.

PART 1

PRELIMINARY

Clauses 1 – 4 provide for the short title, the interpretation of words and terms used in the Bill and Application of the Bill to plants, plant products and regulated articles in free circulation.

Clause 1 contains the short title and the operational date of the Bill.

Clause 2 has the definitions of terms used in the Bill.

Clauses 3 and 4 of the Bill provide for the scope and objects of the Bill respectively, and in relation to the former, provides that the Bill does not apply to food that is produced, prepared, imported or exported for personal consumption.

PART II

ADMINISTRATION

Clauses 5 – 18 provide for the administration of the Bill.

Clause 5 establishes the Minister as the person responsible for the general administration of the Bill and sets out the powers of the Minister.

Clause 6 provides for the Food Safety Service and its functions, while Clause 7 provides for the establishment of the National Food Safety Advisory Body as an advisory body to the Minister and the Food Safety Service.

Clauses 8 and 9 provide for the appointment of food inspectors and the investigative powers of food inspectors respectively, with food inspectors requiring a warrant or consent before exercising their investigative powers.

Clause 10 provides for the delegation of its functions by the Food Safety Service and restricts the Food Safety Service from delegating certain specified functions.

Clauses 11 and 12 provide for agreements and memoranda of understanding, and the approval of manuals developed by the Food Safety Service by the Minister.

Clause 13 provides that the Minister may designate laboratories as reference laboratories and sets out the functions of a reference laboratory.

Clause 14 provides that the Minister shall designate at least one laboratory or testing facility as an official laboratory for the purposes of testing and analysis.

Clause 15 provides for the designation of a qualified person as a food analyst and Clause 16 provides for the monitoring of this Act.

Clause 17 sets out the principles of food safety measures and Clause 18 provides for the food standards and requirements.

PART III FOOD CONTROL AND EMERGENCY PREPAREDNESS

Clauses 19-30 address issues relating to food control and preparedness for food emergencies.

Clause 19 provides that the Food Safety Service shall oversee a traceability system.

Clauses 20 and 21 provide for the recall of food products and the recall responsibilities and procedures involving an importer or exporter.

Clauses 22 and 23 provide for inspection and seizure of suspected food, food hazards and diseases in premises, while Clause 24 provides for non-compliance by a food business operator or an owner of premises in which a food business operates, with directives by the Food Safety Service.

Clause 25 prohibits food fraud to protect consumers from unscrupulous practices including the sale of food that has been tampered with or that misleads the public in a material particular while Clauses 26 and 27 provide for limiting and banning substances or process in food and for information to be provided to the public in relation to food hazards.

Clauses 28 and 29 provide for an emergency response plan, early warning system and emergency measures.

Close 30 provides for the summary closure of food businesses and the procedure for appeal of the summary closure by the food business operator or owner of the premises.

PART IV FOOD BUSINESS AND STREET FOOD

Clauses 31-41 provide for a licensing regime for food businesses, certification of food handlers and makes provision for persons engaging in the sale of street food.

Clauses 31 and 32 provide for the licensing, suspension and revocation of food business licenses.

Clause 33 imposes general obligations on food business operators.

Clause 34 provides that a person who wishes to engage in street food vending must register with the Food Safety Service and obtain a food handler's certificate and Clause 35 provides the regime for certification as a food handler.

Clauses 36 provides for the monitoring of medical conditions of food handlers and Clause 37 imposes a duty on medical practitioners to report incidences of food related illness.

Clause 38 prohibits the selling food which does not comply with food safety requirements.

Clauses 39, 40 and 41 provide for labelling and packaging of food intended for sale, repackaging of food and false labelling.

PART V IMPORT AND EXPORT OF FOOD

Clauses 42 to 46 provide for the import and export requirements of food.

Clauses 42 and 43 provide for making of an application to the Food Safety Service for persons wishing to import food and inspection by the Food Safety Service.

Clause 44 makes provision for re-labelling or reconditioning of food.

Clause 45 provides for export certification of food.

Clause 46 imposes reporting requirements on importers and exporters of food.

PART VI

TREATMENT OF GOODS IN FREE CIRCULATION IN THE ECONOMIC UNION AREA

Clauses 47 to 52 deal with the treatment of goods in free circulation, and provides for mechanisms for facilitating the free movement regime.

Clause 47 provides for the treatment of food moving within the Economic Union Area.

Clause 48 provides for application for food health certificate before dispatching of food from one OECS Protocol Member State to another, which is not mandatory but which is intended to guarantee expedited clearance at the destination Protocol Member State.

Clause 49 provides for the formation of a network of OECS Agriculture Health and Food Safety competent authorities for the exchange of information, and to provide guidance and recommendations to Food Safety Services of the OECS.

Clause 50 provides for the application of common procedures, principles and risk management system to facilitate the free circulation of goods in the Economic Union Area.

Clause 51 provides for information sharing through the OECS Customs Information System and any other rapid alert system accessible to the OECS Protocol Member States.

Clause 52 provides for food items not permitted to move freely in the Economic Union Area.

**PART VII
ENFORCEMENT**

Clauses 53- 68 contain provisions for the enforcement of the Act.

Clause 53 provides the enforcement powers of a food inspector, which are exercisable after a food inspector has exercised an investigative power under Clause 9. The food inspector's enforcement powers may be performed without warrant or consent.

Clause 54 sets out the objects subject to inspection.

Clause 55 is a prohibition on food inspectors making unauthorised disclosures to third parties.

Clauses 55 provides an enforcement procedure for food that is not fit for human consumption.

Clauses 57, 58 and 59 provide for issuing of a certificate of condemnation, an improvement notice and an emergency hygiene prohibition notice.

Clause 60 provides for the giving of information and guidance to members of the public concerning food safety laws and the implementation of the Act.

Clauses 61, 62, 63 and 64 provide for offences and penalties, fixed penalties, procedure for offences and forfeiture.

Clause 65 provides for the acceptance into evidence of signed documents of the Food Safety Service, a food analyst, a food inspector or a police officer as proof of the matters asserted in those documents, in the absence of evidence to the contrary.

Clause 66 provides for the right of appeal against the decisions of the Food Safety Service.

Clauses 67 and 68 provide for offences by officials under the Act and a good faith defence.

PART VIII MISCELLANEOUS

Clauses 69-75 address miscellaneous matters.

Clause 69 makes provision for the various methods of service of notices and other documents under the Act.

Clause 70 enables the furnishing of documents in electronic form.

Clause 71 provides for presumptions applicable to food offered or distributed for sale and mandatory requirements for food requested.

Clause 72 imposes a duty on Customs, seaport, airport, airline, postal, shipping, police and other authorities to assist food inspectors in the performance of their functions under this Act.

Clause 73 empowers the Minister to make regulations and issue orders or notices to give effect to the provisions of the Act.

Clause 74 provides for the repeal of earlier laws dealing with the subject matter of the Act but saves all regulations, notices or orders relating to the same except where they conflict with, and until they are replaced by regulations, notices or orders made under, the Act.

Clause 75 states that the Bill applies to the Crown.